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Attorney for Defendant
EXERGEN CORP.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

SAN FRANCISCO TECHNOLOGY INC.,

Plaintiff,

v.

THE GLAD PRODUCTS COMPANY, BAJER
DESIGN & MARKETING INC., BAYER
CORPORATION, BRIGHT IMAGE
CORPORATION, CHURCH & DWIGHT CO.
INC., COLGAGE-PALMOLIVE COMPANY,
COMBE INCORPORATED, THE DIAL
CORPORATION, EXERGEN CORPORATION,
GLAXOSMITHKLINE LLC, HI-TECH
PHARMACAL CO. INC., JOHNSON
PRODUCTS COMPANY INC., MAYBELLINE
LLC, MCNEIL-PPC INC., MEDTECH
PRODUCTS INC., PLAYTEX PRODUCTS
INC., RECKITT BENCKISER INC., ROCHE
DIAGNOSTICS CORPORATION,
SOFTSHEEN-CARSON LLC, SUN
PRODUCTS CORPORATION, SUNSTART
AMERICAS INC.,

Defendants.

Case No. CV10-00966 JF

**DECLARATION OF DR. FRANCESCO
POMPEI IN SUPPORT OF DEFENDANT
EXERGEN CORPORATION'S NOTICE
OF MOTION AND MOTION TO DISMISS
OR SEVER AND TRANSFER**

Date: July 8, 2010
Time: 1:30 pm
Place: Courtroom 3, 5th Floor
Judge: Honorable Jeremy Fogel

I, Dr. Francesco Pompei, declare as follows:

1. I am the founder, President, and Chief Executive Officer of Exergen Corporation
("Exergen"), I have personal knowledge of the matters stated in this declaration and would testify
truthfully to them if called upon to do so.

1 2. I founded Exergen Corporation in 1980 to apply principles of heat detection and
2 thermodynamics to a number of commercial problems, including energy loss in buildings, heat
3 detection in industrial applications, and, since the late 1980s, temperature measurement for human
4 medical applications. I am the named inventor on over 60 issued United States patents.

5 3. Exergen is a privately held company incorporated in the Commonwealth of
6 Massachusetts, having its principal place of business in Watertown, MA, where it employs
7 approximately one hundred people.

8 4. Although Exergen's thermometers are in high demand, and are sold throughout the
9 country and the world, Exergen has no business operations outside Massachusetts. All of
10 Exergen's employees are located at its Watertown, Massachusetts plant. Exergen owns no
11 property in California and employs no workers in California.

12 5. Exergen makes and sells temporal artery thermometers, among other products.

13 6. The Exergen Temporal Artery Thermometer that is the subject of this lawsuit is
14 known as the "Comfort Scanner," which is a TAT-2000C model thermometer specially branded
15 and packaged for sale at Walgreen's stores.

16 7. Exergen's model TAT-2000C thermometer, including its Comfort Scanner
17 thermometer, are consumer versions of Exergen's TAT-2000 model product.

18 8. Exergen's Temporal Artery Thermometer has been named as one of the Smartest
19 Products of the Decade by Inc. Magazine (Exhibit 1). Exergen has received numerous awards and
20 accolades for its innovative products, including the New England Small Business Association
21 Award for our Temporal Artery Thermometer in 2002.

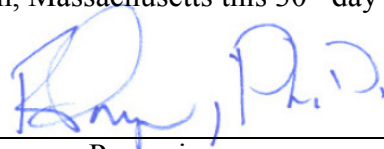
22 9. All Exergen products, including its Temporal Artery Thermometers, are designed,
23 assembled, tested, packaged and shipped at our Watertown facility. The packaging for all Exergen
24 products is designed in Watertown, MA. All decisions regarding the packaging and marking are
25 made in the Watertown facility.

26 10. On or about March 3, 2010, a party named Jennifer Brinkmeier sued Exergen in the
27 District of Delaware for false patent marking.

1 11. Exergen's counsel in Delaware has been authorized by me to seek to transfer the
2 Delaware suit to the District of Massachusetts as we maintain no business operations in Delaware.

3 12. All Exergen relevant documents and witnesses with respect to patent marking are
4 located in, or can be contacted at, Exergen's headquarters in Watertown, MA. Any witnesses who
5 could testify about packaging, labeling, advertising, and sales of the products at issue by Exergen
6 are also be located there.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed at Watertown, Massachusetts this 30th day of June, 2010.

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Dr. Francesco Pompei

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 30, 2010, all counsel of record who are deemed to have consented to electronic service are being served with a copy of the **DECLARATION OF DR. FRANCESCO POMPEI IN SUPPORT OF DEFENDANT EXERGEN CORPORATION'S NOTICE OF MOTION AND MOTION TO DISMISS OR SEVER AND TRANSFER** via the Court's CM/ECF system per Local Rule 5-4 and General Order 45. Any other counsel of record will be served by first class mail.

/s/ Robert J. Kent

Robert J. Kent

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